

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS AND INTERFERENCES**

In re Patent Application of:)Attorney Docket No.: F-725

Robert H. Kummer Jr. et al.)Group Art Unit: 3628

Serial No.: 10/681,724)Examiner: D. Vetter

Filed: October 8, 2003)Date: August 28, 2007

Confirmation No.: 6704

Title: System and Method for Real Time Adaptive Class and Special Services Determination

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPELLANTS' BRIEF ON APPEAL

Sir:

This is an appeal pursuant to 35 U.S.C. § 134 and 37 C.F.R. §§ 1.191 et seq. from the final rejection of claims 11-20 of the above-identified application mailed May 1, 2007. A Notice of Appeal was filed on July 17, 2007.

The Commissioner is hereby authorized to charge any additional fees that may be required or credit any overpayment to Deposit Account No. **16-1885**.

I. Real Party in Interest

The real party in interest in this appeal is Pitney Bowes Inc., a Delaware corporation, the assignee of this application.

II. Related Appeals and Interferences

There are no appeals or interferences known to Appellants, their legal representative, or the assignee which will directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.

III. Status of Claims

Claims 1-10 and 21-23 have been cancelled. Claims 11-20 are pending in this application. Claims 11-20 stand rejected under U.S.C. § 103(a) as being unpatentable over Kulik (U.S. 5,842,186) in view of Ramsden et al. (U.S. 5,831,220).

IV. Status of Amendments

There were no amendments to the claims filed subsequently to the Office Action dated May 1, 2007. Therefore, the claims as set forth in Appendix A to this brief are those as set forth before the final rejection.

V. Summary of Claimed Subject Matter

This summary and references to specific page and line numbers, figures and reference characters is not intended to supplant or limit the description of the claimed

subject matter as provided in the claims as recited in Appendix A, as understood in light of the entire specification.

Appellants' invention is directed to a system for processing a plurality of mail pieces that is able to make appropriate class of service determinations during processing. Independent claim 11 recites a mail processing system for processing a mail piece that comprises "a postage meter for applying postage values to said mail piece" (see Fig. 2, item 44 and corresponding description in paragraph [0018]); "a scale for weighing said mail piece" (see Fig. 2, item 42 and corresponding description in paragraph [0018]); "a dimensioning module for determining at least one dimension of said mail piece" (see Fig. 2, item 48 and corresponding description in paragraph [0018]); "a central processing unit controlling operation of said postage meter, said scale and said dimensioning module" (see Fig. 2, item 40 and corresponding description in paragraph [0018]); and "a memory storing postage rating information and software executable by said central processing unit" (see Fig. 2, item 46 and corresponding description in paragraph [0018] – [0019]), "said software including instructions for performing: receiving a first class of service from a user for processing said mail piece" (see Fig. 3, item S1 and corresponding description in paragraph [0021]); "determining a weight of said mail piece using said scale and at least one dimension of said mail piece using said dimensioning module" (see Fig. 3, item S5 and corresponding description in paragraph [0021]); "determining whether said first class of service received from said user is appropriate for said mail piece using said determined weight and said determined at least one dimension and if said first class of service is not appropriate, determining a second class of service for said mail piece using said determined weight and said determined at least one dimension, said second class of service being appropriate for said mail piece" (see Fig. 3, item S6, and Fig. 4 and corresponding description in paragraph [0022], [0024] and [0025]), "setting a final class of service for said mail piece, said final class of service being said first class of service if said first class of service is determined to be appropriate and said second class of service if said first class of service is determined to not be appropriate" (see Fig. 3, item S6, and Fig. 4 and corresponding description in paragraph [0022], [0024] and [0025]), and

"determining a postage amount for said mail piece using said determined weight, said determined at least one dimension, said final class of service and said postage rating information" (see Fig. 3, item S8, and corresponding description in paragraph [0023]).

Additional features of the invention are discussed below in the Argument section of this Brief.

VI. Grounds of Rejection to be Reviewed on Appeal

A. Whether the subject matter defined in claims 11-20 is unpatentable over Kulik (U.S. 5,842,186) in view of Ramsden et al. (U.S. 5,831,220).

VII. Argument

As Appellants discuss in detail below, the final rejection of claims 11-20 is devoid of any factual or legal premise that supports the position of unpatentability. It is respectfully submitted that the rejection does not even meet the threshold burden of presenting a *prima facie* case of unpatentability. For this reason alone, Appellants are entitled to grant of a patent. *In re Oetiker*, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992).

A. The subject matter defined in claims 11-20 is not rendered obvious by Kulik (U.S. 5,842,186) in view of Ramsden et al. (U.S. 5,831,220).

Kulik is directed to calculating and applying postage to pieces of mail using custom rate tables defined by the user. In Kulik, a user inputs a custom rates template that will define the class and rating for each mail piece based on the weight of the mail piece. An example of a custom rates template is provided in Table 2 of Kulik, reproduced below.

TABLE 2

WEIGHT	CLASS	MEANING
weight2	class A	process all mail up to weight2 as class A
weight4	class B	process all mail up to weight4 as class B
weight6	class C	process all mail up to weight6 as class C

After input of the template, the custom rate processor 31 interacts with the rates manager 25, as outlined above, to develop a custom rates rate table 31 corresponding to the template. An example of a custom rates rate table, using the example set forth from Table 2, is provided in Table 3 of Kulik, reproduced below.

TABLE 3

WEIGHT	CUSTOM CLASS	MEANING
weight1	rateA1	class A rate for weight1
weight2	rateA2	class A rate for weight2
weight3	rateB3	class B rate for weight3
weight4	rateB4	class B rate for weight4
weight5	rateC5	class C rate for weight5
weight6	rateC6	class C rate for weight6

Thus, in Kulik a user can define one or more custom rates templates and a corresponding number of custom rates rate tables. During operation of the mail processor, the operator can select a rate table to apply for processing of an input mail stream. For this purpose, the processor presents a list of available rate tables on the display. The displayed list includes all of the standard postal rate classes as well as the names of all of the currently available custom rates rate tables. The user simply selects a table by name from the displayed list, either a standard table or a custom rates rate table, and the mail processor processes all pieces of input mail in accord with the rate table corresponding to the selected table name. (Col. 10, lines 6-21).

Note that in Kulik, as illustrated in Table 1, reproduced below, each class supports each and every weight.

TABLE 1

WEIGHT	CLASSA	CLASSB	CLASSC	CLASSD
weight1	rateA1	rateB1	rateC1	rateD1
weight2	rateA2	rateB2	rateC2	rateD2

weight3	rateA3	rateB3	rateC3	rateD3
weight4	rateA4	rateB4	rateC4	rateD4
weight5	rateA5	rateB5	rateC5	rateD5
weight6	rateA6	rateB6	rateC6	rateD6

As specifically stated in Kulik, “Every weight X will have a corresponding rate XY for every class.” (Col. 7, lines 45-46). Thus, each of the classes A, B, C, and D are suitable for all weights from weight1 through weight6.

Note first that in Kulik, the operator does not select a class of service for processing the mail pieces, but instead selects a rate table. The Office Action contends that Col. 4, lines 58-59 of Kulik disclose receiving a first class of service from a user for processing the mail piece. Col. 4, lines 55-60, of Kulik state, “The processor uses the template and standard rate tables to develop a custom rates rate table for processing mail in multiple classes. Once the custom rates rate table is established, an operator can select any one of the standard tables and one or more such custom rates rate tables.” This clearly indicates that the operator in Kulik selects a rate table, and not a class. As further described below, selection of a rate table is not the same as selecting a class. The Office Action further contends that Col. 8, lines 38-44 of Kulik disclose determining whether the first class of service is appropriate for the mail piece using the determined weight and determined at least one dimension, and if said first class of service is not appropriate, determining a second class of service for said mail piece using the determined weight and the determined at least one dimension. Col. 8, lines 38-50 of Kulik, which are referring to Table 3 reproduced above, state, “For any mail piece of a weight below weight1, e.g., below 1 ounce, the custom rates rate table specifies class A and a postage value A1 for class A type mail, that is \$0.32 from the earlier example. For any piece of mail of a weight between weight1 and weight2, e.g., between 1 and 2 ounces, the custom rates rate table specifies class A and a second postage value A2 for class A type mail. For any piece of mail of a weight between weight2 and weight3, e.g., between 2 and 3 ounces, the custom rates rate table specifies class B and a postage value B3 for class B type mail. For any piece of mail of a weight between weight3 and weight4, the custom rates rate table specifies class B

and a postage value B4 for class B type mail.” This clearly shows that the processing in Kulik is based solely on the weight of the mail piece, and not on a class selection received from the user. The rating done in Kulik is not based in any manner on a class selected by the user, but instead only on the weight of the mail piece in conjunction with the rate specified by the rate table for that weight.

Even if, for argument’s sake, it is assumed that the operator in Kulik can select a class, the system in Kulik will still not operate in the same manner as the present invention. For example, if the operator selects Class A and a custom rate table in Kulik, such as illustrated above in Table 3, then the class in which a mail piece will be processed is still based solely on the weight of the mail piece as provided for in the custom rate table, and not on the preferred class (e.g., Class A) as input by the operator. If, for example using Table 3 above, the weight of a mail piece is Weight3, it will be processed at Class B rate, even though the operator selected Class A, which as shown above with respect to Table 1 of Kulik, is an appropriate class for processing mail with Weight3.

If the operator in Kulik selects a standard rate table that includes the weights for only a single class, the system in Kulik will always use the class for the selected standard rate table even if the class from the standard rate table selected is unsuitable for the mail piece because of an oversize dimension. Thus, even if, for arguments sake, the selection of a standard rate table was considered to be equivalent to selection of a class, the system in Kulik will always use that rate table (and hence that class) regardless if the class is not appropriate for the mail piece based on a dimension of the mail piece.

The system in Kulik does not receive a first class of service from a user for processing the mail piece as is recited in claim 11; instead, in Kulik the user must select a rate table. The system in Kulik also does not determine whether the first class of service received from the user is appropriate for the mail piece using a determined weight and a determined dimension as is recited in claim 11. Instead, if a custom rate table is selected in Kulik, it will automatically apply the class specified for the weight of

the mail piece without any regard to a class selected by the user. If a standard rate table is selected in Kulik, it will always apply the class from the standard rate table without determining if that class is appropriate based on the weight and at least one dimension. The system in Kulik also will not determine a second class of service for the mail piece using the determined weight and the determined at least one dimension if the first class of service is not appropriate as is recited in claim 11. Instead, as noted above, if a custom rate table is selected in Kulik, it automatically applies the class specified for the weight of the mail piece without regard to a class selected by the user, so there is no determination of whether or not the class selected by the user is appropriate and if not, determining a second class for the mail piece. A custom rate table makes only a single determination. If a standard rate table is selected in Kulik, the system in Kulik will never determine a second class; it can only utilize the single class provided in the standard rate table.

The reference to Ramsden does not cure the above deficiencies, as there is no disclosure, teaching or suggestion in Ramsden of receiving a first class of service from a user for processing the mail piece, determining whether the first class of service received from the user is appropriate for the mail piece using a determined weight and a determined dimension, and determining a second class of service for the mail piece using the determined weight and the determined at least one dimension if the first class of service is not appropriate.

For at least the above reasons, Appellants respectfully submit that the final rejection as to claim 11 is in error and should be reversed. Claims 12-20 are dependent upon claim 11, and therefore include all of the limitations of claim 11. For the same reasons the final rejection as to claim 11 is in error, Appellants respectfully submit that the rejection of claims 12-20 is similarly in error and should be reversed.

VIII. Conclusion

In Conclusion, Appellants respectfully submit that the final rejection of claims 11-20 is in error for at least the reasons given above and should, therefore, be reversed.

Respectfully submitted,

/Brian A. Lemm/
Brian A. Lemm
Reg. No. 43,748
Attorney for the Appellants
Telephone (203) 924-3836

PITNEY BOWES INC.
Intellectual Property and
Technology Law Department
35 Waterview Drive
Shelton, Connecticut 06484-8000

Attachments - Appendix A – Claims Appendix (4 pages)
 Appendix B – Evidence Appendix (1 page)
 Appendix C – Related Proceedings Appendix (1 page)

APPENDIX A – Claims Appendix

1-10. Canceled.

11. A mail processing system for processing a mail piece comprising:
a postage meter for applying postage values to said mail piece;
a scale for weighing said mail piece;
a dimensioning module for determining at least one dimension of said mail
piece;
a central processing unit controlling operation of said postage meter, said
scale and said dimensioning module; and
a memory storing postage rating information and software executable by said
central processing unit, said software including instructions for performing:
receiving a first class of service from a user for processing said mail
piece;
determining a weight of said mail piece using said scale and at least
one dimension of said mail piece using said dimensioning module;
determining whether said first class of service received from said user
is appropriate for said mail piece using said determined weight and said determined
at least one dimension, and if said first class of service is not appropriate,
determining a second class of service for said mail piece using said determined
weight and said determined at least one dimension, said second class of service
being appropriate for said mail piece;
setting a final class of service for said mail piece, said final class of
service being said first class of service if said first class of service is determined to
be appropriate and said second class of service if said first class of service is

determined to not be appropriate; and

determining a postage amount for said mail piece using said determined weight, said determined at least one dimension, said final class of service and said postage rating information.

12. The mail processing system according to claim 11, wherein said software further includes instructions for causing said postage meter to apply said determined postage amount to said mail piece or a tape to be applied to said mail piece.

13. The mail processing system according to claim 11, wherein receiving a first class of service further comprises:

receiving one or more special services to be applied to said mail piece.

14. The mail processing system according to claim 13, wherein setting a final class of service further comprises:

determining whether each of said special services is applicable to said mail piece using said postage rating information, said postage rating information including special service availability information, and

generating a list of applicable special services for said mail piece.

15. The mail processing system according to claim 14, wherein determining a postage amount for said mail piece further comprises:

determining a postage amount for said mail piece using said determined weight, said determined at least one dimension, said final class of service, and said list of applicable special services.

16. The mail processing system according to claim 14, wherein determining whether each of said special services is applicable to said mail piece is based on said final class of service, said determined weight, said determined at least one dimension, and a determination as to whether all applicable prerequisite

requirements have been satisfied.

17. The mail processing system according to claim 14, wherein said software further includes instructions for storing transaction information for said mail piece in said memory, said transaction information including said determined postage amount and said final class of service.

18. The mail processing system according to claim 11, wherein said software further includes instructions for storing transaction information for said mail piece in said memory, said transaction information including said determined postage amount, said final class of service and said list of applicable special services.

19. The mail processing system according to claim 11, wherein determining whether said first class of service is appropriate and determining a second class of service comprise:

determining whether said first class of service supports said determined at least one dimension and, if not, finding a third class of service that supports said determined at least one dimension;

determining whether one of said first class of service and said third class of service, if applicable, supports said determined weight and, if not, finding a fourth class of service that supports said determined weight;

setting said second class of service equal to said third class of service if said first class of service does not support said at least one dimension and said third class of service supports said weight; and

setting said second class of service equal to said fourth class of service if neither of said first class of service and said third class of service, if applicable, supports said determined weight;

wherein said first class of service is appropriate if said first class of service

supports both said determined at least one dimension and said determined weight.

20. The mail processing system according to claim 19, wherein finding a third class and finding a fourth class further comprise:

determining said third class of service and said fourth class of service based on predetermined rules for switching classes.

21-23. Canceled.

APPENDIX B – EVIDENCE APPENDIX

There is no evidence submitted pursuant to §§ 1.130, 1.131, or 1.132 or any other evidence entered by the examiner and relied upon by Appellant in the appeal.

APPENDIX C – RELATED PROCEEDINGS APPENDIX

There are no appeals or interferences known to Appellants, their legal representative, or the assignee which will directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.